CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES[1]

Meeting Date:	**October 18, 2011**
Meeting Time:	**1:30 P.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 233**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**1**

Members Present: **Rep. Jud McMillin; Rep. Ralph Foley; Rep. John Bartlett; Sen. R. Michael Young; Sen. Greg Taylor; Gretchen Gutman; Gary Miller; Hon. Margret G. Robb; Mike McMahon; Jerry Bonnet; Matt Light; Anita Samuel.**

Members Absent: **Rep. Shelli VanDenburgh; Sen. James Banks; Sen. James Arnold.**

The meeting began at approximately 1:40 p.m. John Stieff, the director of the Legislative Services Agency's Office of Code Revision (OCR), explained that the election of a chairperson would be timely under IC 2-5-1.1-10 as the meeting's first order of business because the meeting was the Commission's first meeting of the year. Chief Judge Margret G. Robb of the Court of Appeals nominated Representative Ralph Foley, and Representative Foley was elected chairperson by a voice vote. The members of the Commission then introduced themselves.

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[1] These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for hard copies.

Assuming his new position, Representative Foley asked for a motion to accept the minutes of the Commission's previous meeting (the meeting of December 7, 2010), copies of which had previously been distributed to the Commission's members. Commission member Gary L. Miller expressed interest in a draft referred to on page 4 of those minutes and Mr. Stieff directed staff to provide Mr. Miller with a copy of that draft. The minutes of the previous meeting were accepted.

Mr. Stieff then addressed the Commission, saying that:

- **it was anticipated that the Commission would meet twice in 2011;**
- **at this first meeting, the Commission would be presented with a draft of the 2012 technical corrections bill and other matters would be discussed; and**
- **at the second 2011 meeting (which has been scheduled for November 15), the Commission will be presented with:**
  - **a draft prepared in compliance with the mandate to the Legislative Services Agency (LSA), as set forth in SECTION 285 of House Enrolled Act 1001, to prepare 2012 legislation to organize and correct statutes affected by the repeal of the state Personnel Department law (IC 4-15-1.8) and the state merit system law (IC 4-15-2); and**
  - **a draft to follow up on 2011 Senate Enrolled Act 490, which dealt with noncode acts.**

Commission member Anita Samuel commented that she, on behalf of the governor's office, has been working with LSA attorney Peggy Piety and the State Department of Personnel on the preparation of the 2012 legislation to organize and correct statutes affected by the repeal of IC 4-15-1.8 and IC 4-15-2, and that those working on the legislation intended to have a draft ready for the Commission to review at its November 15 meeting.

Representative Foley then recognized Craig Mortell, deputy director of OCR, for the discussion of PD 3217, the draft of the 2012 technical corrections (TC) bill. Representative Foley expressed appreciation for the work done by OCR in preparing the annual TC bill draft and briefly discussed the standards used in the preparation of the draft. Senator Greg Taylor asked how OCR identifies the problems addressed in each year's TC bill draft.

Mr. Mortell replied that the "tips" concerning Indiana Code sections in need of technical correction come from a variety of sources, including legislators, state agencies, and members of the public, but that most tips come from the attorneys of LSA's Office of Bill Drafting and Research, who review every new public law after each legislative session and report any technical problems they find to OCR. In response to another question from Senator Taylor, Mr. Mortell said that OCR cannot simply fix most technical problems on its own -- most technical problems can be resolved only through legislation, specifically through the annual TC bill draft.

Expanding upon Representative Foley's remarks concerning standards, Mr. Mortell stated that OCR applies four criteria -- which are based on guidance that OCR has received from the Commission over the years -- in determining whether an apparent problem in the Indiana Code should be addressed in the TC bill draft that OCR prepares for the Commission. Under these criteria, OCR generally does not attempt to address an apparent problem in the TC bill draft unless:

(1) it is clear that a mistake or problem of some sort exists;

(2) there is only one way in which the mistake or problem can be corrected;

(3) the one way of correcting the mistake or problem is apparent on the face of the Code section affected by the mistake or problem; and
(4) the proposed correction of the mistake or problem would not constitute a substantive change in the law.

Senator R. Michael Young inquired about SECTION 6 of PD 3217, which amends IC 2-5-31.9-2(b) to change a particular subsection reference. He noted that IC 2-5-31.9-2(b) currently reads, "(each) member of the committee who is not: (1) a member of the general assembly; or (2) appointed under subsection (a)(11); must be a member of a qualified organization ..." and that PD 3217 would change this to read, "(each) member of the committee who: (1) is not a member of the general assembly; and (2) is not appointed under subsection (a)(13); must be a member of a qualified organization ..." He expressed concern that changing the conjunction from "or" to "and" would alter the meaning of IC 2-5-31.9-2(b). Staff offered to return the text of IC 2-5-31.9-2(b) to its current form (except for changing the incorrect subsection reference) to address Senator Young's concern.

Commission member Gretchen Gutman noted the number of SECTIONS in PD 3217 that resolve technical conflicts. (A "conflict" in this sense exists between the multiple versions of a Code section that result from the section having been amended in different ways by two or more 2011 acts.) Ms. Gutman asked whether more could be done to resolve such conflicts before the end of a legislative session. Mr. Stieff spoke about OCR's efforts to resolve technical conflicts during the session through Joint Rule 20. He pointed out that the Joint Rule 20 process (which requires coordination between OCR and the House and Senate majority attorneys' offices, formal action by the House and Senate rules committees, the written consent of a bill's author and sponsor, and formal approval by the House and Senate) is a time-consuming, complex process; that a conflict between two bills amending the same Code section cannot be resolved through Joint Rule 20 unless one of the bills has proceeded "all the way through the process"; and that resolving conflicts through Joint Rule 20 was especially difficult during the 2011 session because of the unusually large number of conflicts (with one week remaining in the session there were still two hundred Code sections and chapters "in conflict") and because, in an unusually large number of cases, neither of the bills involved in the conflict became an enrolled act until very late in the session. Mr. Stieff stated that, starting with the 2012 session, LSA will begin providing information on existing conflicts to caucus attorneys in the House and Senate at the point in the session at which bills change houses, and that it is hoped that this will facilitate the resolution of conflicts before the session ends.

Representative Foley commented that, as a past chairman and ranking member of the House Rules Committee, he could attest that Joint Rule 20 motions require a lot of time and attention just when legislators are very busy with other, substantive legislative matters. He also said that the 2011 session was particularly challenging due to the large number of amendments that were passed late in the session, which contributed to the large number of unresolved conflicts. He welcomed any suggestions that might help LSA to minimize the number of conflicts in the future.

Mr. Mortell distributed to the Commission members a two-page handout ("How the Technical Corrections Bill Resolves Technical Conflicts" and "Illustration of a Section Resolving a Technical Conflict") that was intended as an explanation of PD 3217's conflict resolution SECTIONS. Representative Bartlett commented that

someone who had not served on the Code Revision Commission might not be aware of the need for the conflict resolution process.

Mr. Mortell then brought up two "close call" SECTIONS -- SECTIONS that seemed to be suitable for inclusion in the TC bill draft but that staff believed should be brought to the Commission's attention so that the Commission could decide specifically whether they should remain in the draft. The first was SECTION 12, which resolves the conflict affecting IC 4-12-4-9. Mr. Mortell explained this SECTION as follows: Two 2011 acts, HEA 1233 and HEA 1001, amended IC 4-12-4-9. HEA 1233 granted the Indiana Tobacco Use Prevention and Cessation Executive Board one additional power, but HEA 1001 abolished the Indiana Tobacco Use Prevention and Cessation Executive Board and transferred its assets, obligations, powers, and duties to the Department of Health. Merging the versions of IC 4-12-4-9 as amended by HEA 1233 and HEA 1001 would, therefore, take the additional power that HEA 1233 granted to the Tobacco Board and give it over to the Department of Health, which is something that the General Assembly presumably did not have in mind in enacting HEA 1233. However, since HEA 1001 specifically provided for all of the Tobacco Board's powers to be transferred to the Department of Health, it seems logical to assume that merging the HEA 1233 version of IC 4-12-4-9 with the HEA 1001 version of IC 4-12-4-9 -- and thereby transferring the new power established by HEA 1233 to the Department of Health -- is consistent with the General Assembly's overall intent in enacting HEA 1233 and HEA 1001. Representative Foley and Senator Young discussed the question presented in the matter of IC 4-12-4-9.

The second "close call" in PD 3217 to be discussed was SECTION 207, which amends IC 36-7-4-214. Mr. Mortell explained this SECTION as follows: IC 36-7-4-214(a) provides that when a municipal plan commission exercises jurisdiction in an unincorporated area outside the incorporated area of the municipality, two additional citizen members must be appointed to the municipal plan commission to represent the unincorporated area. Before 2011, IC 36-7-4-214 provided that an individual had to reside in the unincorporated area to be eligible for appointment as one of the two additional citizen members. In 2011, HEA 1311 amended IC 36-7-4-214 so as to add a second, alternative condition of eligibility for appointment. Now, each individual appointed may be either: (A) a resident of the unincorporated area; or (B) a resident of the county who owns real property located within the unincorporated area. Besides adding the second, alternative condition of eligibility for appointment, HEA 1311 inserted into IC 36-7-4-214(a) an additional sentence about the two additional citizen members: "However, at least one (1) of the members must be a resident of the incorporated area." It seems that the use of the word "incorporated" in this sentence must have been an error and its antonym, "unincorporated", must have been intended. While it may be a "close call" whether this error is suitable for resolution in the TC bill, a strong case can be made that the SECTION resolving it satisfies the four criteria discussed earlier. That "incorporated" is wrong and "unincorporated" is the only correct word to replace "incorporated" can be deduced simply from the text of IC 36-7-4-214(a). The entire thrust of IC 36-7-4-214(a) is to bring about representation of the unincorporated area on the municipal plan commission. For the sentence added by HEA 1311 to require that one of the additional citizen members appointed be a resident of the incorporated area is completely inconsistent with the rest of IC 36-7-4-214(a) and the rest of HEA 1311's amendment of IC 36-7-4-214(a).

John Molitor, an attorney and former director of OCR, commented on IC 36-7-4-

214(a). He pointed out that the amendment by which "incorporated" was inserted into IC 36-7-4-214(a) was proposed during a committee meeting to meet concerns voiced by a committee member. He characterized the presence of "incorporated" in IC 36-7-4-214(a) as more of a typo than any other sort of error.

Representative Foley and other Commission members then brought a number of particular matters concerning the TC bill draft to Mr. Mortell's attention, including:

- **on the outline's page 39, in the paragraph describing SECTION 164, an error as to which word is stricken in the draft;**
- **the wording of IC 35-47-2-17, as amended in SECTION 197, which, Representative Foley suggested, reads a little awkwardly; and**
- **SECTION 13, amending IC 4-21.5-3-1, concerning which Judge Robb and Representative Jud McMillin suggested certain revisions in the organization of the text.**

Senator Taylor recommended that the Commission defer action on the TC bill draft until its November meeting, and Representative Foley agreed.

Representative Foley then recognized Jack Ross, Executive Director of LSA, for the discussion of the next subject on the agenda, a change in the style of repealer provisions in bills.

Before taking up that subject, Mr. Ross commented, in response to Senator Taylor's earlier question about LSA's desire to have the TC bill acted upon as early in the session as possible to minimize conflicts, that he has approached leadership about the possibility of completing legislative action on the TC bill on organization day. He said, however, that it seems there is no support for this idea among leadership.

Mr. Ross informed the Commission that he has had a number of discussions with legislative leaders about ways of preventing the recurrence of some of the problems that occurred in the 2011 session. He spoke about LSA's decision to distribute the "bills in conflict" document to the caucus attorneys (previously discussed by Mr. Stieff) in mid-session as one step that LSA will take. Another step he discussed was a proposed change in the way repealers of Code provisions will be presented in bills:

- **When a section is being repealed, the entire text of the section will be printed in the bill with all of its words stricken.**
- **When a chapter is being repealed, the repealer provision will identify the chapter by its IC number (as now) but will include a parenthetic statement summarizing the content of the chapter. In most cases, this summarizing statement will be the chapter heading, as it appears in the published Code.**
- **Instead of being placed at the end of a bill, repealer provisions will appear within the bill according to the Code cite order of the bill's SECTIONS.**

Mr. Ross commented that leadership favors these changes concerning repealer provisions; that, if the Code Revision Commission approves the changes, its approval will be treated as a recommendation that the Legislative Council also approve the changes when it meets on November 21st; and that if the Legislative Council approves the changes, the Form and Style Manual will be revised to incorporate the changes. Representative Bartlett made a motion that the Commission recommend the changes to the Legislative Council. This motion was adopted unanimously by voice vote.

Mr. Stieff then brought up another issue: the way in which Indianapolis and Marion County are referred to in legislation. He provided the following information: The Census Data Advisory Committee is working on a large project to revamp the many sections throughout the Indiana Code that differentiate among political subdivisions by reference to population parameters. It will be the Census Data Advisory Committee's decision whether to retain the population parameters or replace them with the names of the political subdivisions. As part of that project, the Census Data Advisory Committee is currently considering whether the references throughout the Code to "consolidated city" and "county containing a consolidated city" should be changed to "Indianapolis" and "Marion County".

The question Mr. Stieff was bringing to the Code Revision Commission, he said, was whether the Code Revision Commission wished to make a recommendation to the Legislative Council concerning the way in which Indianapolis and Marion County will be referred to in future legislation -- that is, whether future legislation should refer to them as "Indianapolis" and "Marion County" or continue referring to them as "consolidated city" and "county containing a consolidated city."

Senator Young said that he understands that there is a constitutional issue concerning the differentiation among political subdivisions by reference to population parameters, but that a consolidated city is not a population parameter but a legal entity. He asked whether it would be possible under current law for Fort Wayne or Evansville to become a consolidated city or whether new legislation would be necessary in order for that to happen. Mr. Stieff replied that he thought new legislation would be required and suggested that Bob Rudolph, the LSA attorney who staffs the Census Data Advisory Committee, could address Senator Young's question.

Bob Rudolph said that current law provides that a first class city is a consolidated city and that the qualification for the status of first class city is based only on population.

Mr. Rudolph then made the following comments: It is clear to him that underlying basis on which the Indiana Supreme Court decided that the "unigov" law (which made Indianapolis the only consolidated city) did not violate Article 4, Sections 22 and 23 of the Indiana Constitution is no longer tenable. The idea that a statute treating political subdivisions differently by reference to population parameters is a general law and not a special or local law because political subdivisions can move into and out of population parameters as their populations change cannot be sustained anymore. In 2004 the General Assembly raised the upper population parameter for second class cities, apparently to prevent Fort Wayne from becoming a consolidated city, thus creating the appearance that only Indianapolis was ever intended to become a consolidated city.

Representative Bartlett commented that the issue of "unigov" is a sore spot with him because, in his view, the adoption of unigov diluted the voting power of African-American voters. For example, he said, he lives in Lawrence Township but is not allowed to vote for mayor of the city of Lawrence; on the other hand, voters living within the city of Lawrence are able to vote not only for the mayor of the city of Lawrence but also the mayor of Indianapolis. Senator Taylor commented that he, as a legislator representing a district within Indianapolis/Marion County, is disturbed by the quantity of legislation considered and passed by the General Assembly that

treats Indianapolis/Marion County differently from the rest of the state. Through this legislation, he said, legislators from every other part of the state are deciding matters that affect Indianapolis/Marion County exclusively.

Senator Young posed this question: If the practice were changed so that future legislation would use the name "Indianapolis" instead of "consolidated city," wouldn't it be more likely that the legislation would be found to be "local or special" and in violation of Article 4, Sections 22 and 23 of the Indiana Constitution?

Representative Foley commented there is often legislation applying only to Vanderburgh County or Allen County, and rarely is there legislation that is intended exclusively to help a county like Morgan County, the county he represents. He said that he wanted the Commission to focus simply on the nomenclature question (i.e., whether future legislation applying to Indianapolis and Marion County should refer to"Indianapolis" and "Marion County" or continue referring to them as "consolidated city" and "county containing a consolidated city"). He posed the question whether the Commission would invite litigation and confusion by changing the nomenclature. He said that the Code Revision Commission is not a policymaking body, and that it was his view that the Commission should avoid intruding into policy matters.

Ms. Gutman expressed uncertainty as to whether the issues being discussed pertained only to Indianapolis/Marion County or to all political subdivisions affected by statutory political parameters.

Mr. Gary Miller expressed the opinion that the question the Commission was being asked to determine went beyond the scope of the Commission and involved substantial policy issues that the Commission had no authority to deal with. Senator Young commented that the issues being discussed were complex and that their potential legal implications were largely unknown. He expressed an interest in having LSA or the attorney general's office research their legal implications. Instead of this subject being discussed by the Code Revision Commission in a two-hour meeting, he said, perhaps it should have been the exclusive focus of a summer study committee.

Jerry Bonnett posed the following questions: What is the point of the proposal? Is it that the statutes using population parameters are unconstitutional, and that the Code Revision Commission being asked to do something to make those statutes constitutional? If the statutes are unconstitutional because they differentiate among political subdivisions by reference to population parameters, wouldn't those statutes still be unconstitutional if the political subdivisions' names were substituted for the population parameters?

Representative Foley asked whether it was the sentiment of the Commission to put off any action on this matter until the November 15 meeting. Ms. Gutman spoke in favor of doing so. The meeting was then adjourned.